

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOHN M. WYATT, III,

Plaintiff,

v.

MARK T. MCDERMOTT, ESQUIRE,
et al.,

Defendants.

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CIVIL ACTION NO. 1:11-cv-58-GBL/IDD

MOTION FOR PARTIAL SUMMARY JUDGMENT
OF DEFENDANTS LARRY S. JENKINS AND WOOD JENKINS, LLC

Defendants Larry S. Jenkins (“Jenkins”) and Wood Jenkins, LLC (“Wood Jenkins”), by counsel, move for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons stated below, and more fully set forth in the accompanying brief, summary judgment should be granted in favor of the defendants and against the plaintiff on the claims of fraud, constructive fraud, and conspiracy.

1. Unwed biological father, like the plaintiff, have only inchoate parental rights. *Lehr v. Robertson*, 463 U.S. 248 (1983). The plaintiff did not grasp his inchoate parental rights pursuant to Utah law or Virginia law.

2. The ability to protect his parental rights, including the right to formal notice of an adoption proceeding, was completely within the plaintiff’s own control. From the time E.Z. was conceived in roughly May of 2008 until February 12, 2009, all the plaintiff had to do to preserve his right to notice of an adoption was to register with Utah’s state registrar of vital statistics with the Department of Health or register with the Virginia

Putative Father Registry. He did neither, nor any of the other enumerated actions that would have provided him notice. Thus, he was not entitled to formal notice, of the adoption proceedings by any of the defendants.

3. There is no evidence that any defendant alone or in combination sought to accomplish some criminal or unlawful purpose or to accomplish some lawful purpose by criminal or unlawful means. Nothing the alleged co-conspirators did or did not do prevented the plaintiff from establishing his parental rights. The plaintiff, with the assistance of his chosen legal counsel, waived his inchoate rights by his failure to take correct and timely actions in Virginia or Utah.

4. Plaintiff's fraud claims, Counts E and F in his Complaint, are premised on two asserted misrepresentations made by Colleen Fahland ("Fahland") to him: that he would be present for the birth and that he would participate in decisions about the child's future. Neither of the alleged misrepresentations rises to the level of a fraudulent misrepresentation. First, neither of the alleged statements is a representation by Fahland of a material fact. Second, there is no evidence that the alleged misrepresentations were made by Fahland with the intent to mislead the plaintiff. Third, the plaintiff did not reasonably rely upon these alleged statements. Lastly, neither of the alleged statements resulted in the waiver of the plaintiff's parental rights.

5. There is no connection between Jenkins and/or Wood Jenkins and the alleged fraudulent misrepresentations made by Fahland. Jenkins and Wood Jenkins had no knowledge that these alleged misrepresentations were made by Fahland to the plaintiff, and there is no evidence to the contrary.

WHEREFORE, Larry S. Jenkins and Wood Jenkins, LLC respectfully request this Honorable Court grant summary judgment in their favor on the plaintiff's claims for fraud, constructive fraud, and conspiracy.

LARRY S. JENKINS and
WOOD JENKINS, LLC
By Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May, 2012, I will electronically file the foregoing Motion for Partial Summary Judgment with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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